3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RTID 0648-XB620

Pacific Island Fisheries; Experimental Fishing Permit Application

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of application for experimental fishing permit; request for comments.

SUMMARY: NMFS announces that the Hawaii Longline Association (HLA) has applied for an experimental fishing permit (EFP) to test tori lines (bird scaring devices) in the Hawaii shallow-set longline fishery for swordfish. The intent of the EFP is to test new ways to discourage seabird interactions that also increase operational flexibility.

DATES: NMFS must receive comments by [*insert date 30 days after date of publication in the* ***FEDERAL REGISTER***].

ADDRESSES: You may submit comments on this document, identified by NOAA-NMFS-2021-0128, by either of the following methods:

- *Electronic Submission*: Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *https://www.regulations.gov* and enter NOAA-NMFS-2021-0128 in the Search box. Click on the "Comment" icon,

complete the required fields, and enter or attach your comments.

- *Mail*: Send written comments to Michael D. Tosatto, Regional Administrator, NMFS Pacific Islands Region (PIR), 1845 Wasp Blvd., Bldg. 176, Honolulu, HI 96818.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (e.g., name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous).

You may review the EFP application at *www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Lynn Rassel, Sustainable Fisheries, NMFS Pacific Islands Regional Office, tel (808) 725-5184.

SUPPLEMENTARY INFORMATION: HLA applied for an EFP under the authority of the Magnuson-Stevens Fishery Conservation and Management Act and regulations at 50 CFR 665.17. If approved, the EFP would allow the HLA to conduct a pilot

study using tori lines (bird scaring streamers) as a potential replacement for current regulations at 50 CFR 665.815 that require the deployment of gear at night (night-setting), thawed blue-dyed bait, and strategic offal discharge. Night-setting, or setting one hour after sunset, is an effective method for reducing seabird bycatch because seabirds do not typically forage at night.

Since 1994, the NMFS Pacific Islands Regional Office Observer Program has monitored seabird interactions in the Hawaii longline fisheries. Starting in 2001, in response to large numbers of seabird interactions, NMFS implemented a suite of seabird mitigation requirements. The current seabird requirements, including night-setting and using blue-dyed bait and strategic offal discharge, began in 2002 (67 FR 34408, May 14, 2002) and were revised in 2005 (70 FR 75057, December 19, 2005). These requirements resulted in reductions in seabird interactions by 70-90 percent. Seabird interactions in the Hawaii longline fisheries have gradually increased in subsequent years with significant increases in black-footed albatross interactions since 2015.

In 2017, the Western Pacific Fishery Management Council (Council) held a workshop to explore the cause of the increasing interactions with black-footed albatross. The workshop suggested that a positive (warm) Pacific Decadal Oscillation, with its cooler sea surface in the

western Pacific and stronger westerly winds, may increase the overlap of fishing effort and black-footed albatross foraging grounds, leading to more seabird interactions in the fishery.

In 2018, the Council held a follow-up workshop to review seabird mitigation requirements and identify research needed to inform potential future requirements to reduce interactions with seabirds. That workshop identified certain mitigation measures, including tori lines, as a high priority for further research and development due to their potential to provide an effective alternative to blue-dyed bait.

Resulting tori line tests in the Hawaii deep-set longline fishery in 2019-2021 showed tori lines to be a more effective seabird mitigation measure than blue-dyed bait. In addition, the use of blue-dyed bait can be impractical due to the time and materials required to dye the bait, the need to fully thaw the bait which increases bait loss from hooks, and the administrative burden to monitor and enforce consistent application of blue-dye bait. However, data are lacking on the extent to which blue-dyed bait adds to the effectiveness of the already effective night-setting technique that is required in the shallow-set fishery. We also have little information about whether alternative measures may replace blue-dyed bait to produce similar or improved interaction mitigation effects

during setting operations in the shallow-set fishery. The tests in the deep-set fishery also showed that strategic offal discharge (discharging fish, fish parts, and bait) during setting operations may increase interactions over time by attracting seabirds to fishing vessels.

At its March 2021 meeting, the Council called for additional research to develop appropriate seabird mitigation measures for the shallow-set fishery. The Council emphasized that it intends to identify mitigation measures that maintain the effectiveness of seabird deterrence during dusk compared to the existing night-setting measures to provide operational flexibility in the time period when gear is set. Swordfish depths are affected by diel vertical migrations and lunar illumination, and Hawaii shallow-set longline fishermen have historically adjusted their set time according to the lunar phase to increase efficiency and optimize catch. Providing greater flexibility for the start of setting time while also deterring seabird interactions may help to optimize swordfish catch rates according to the lunar cycle, promote more efficient fishing operations, maintain catch value, and enhance crew safety.

Under the EFP, the HLA would use one vessel to test setting up to one hour before sunset in the shallow-set fishery, while using two tori lines. The tori lines would have an aerial extent of about 65-75 meters each, and would

be used instead of strategic offal discharge when seabirds are present and thawed blue-dyed bait, both of which are normally required while stern-setting in the fishery. Previous tori line testing in the deep-set fishery used a single tori line with a 50 meter aerial extent. That configuration meets tori line specifications applicable under international agreements for deep-set fishing in the North Pacific and is appropriate for the level of seabird interaction risk in the deep-set fishery. Seabird interaction risk in the shallow-set fishery is greater because fishing hooks are within the diving range of foraging seabirds during the set and the haul for a longer period of time than in the deep-set fishery. Tori line practices elsewhere suggest that increasing the tori line aerial extent, along with the number of tori lines deployed, increases effectiveness; therefore, the EFP proposes to use two longer tori lines (one on each side of the gear while it is being set). Using more than two tori lines would likely be difficult for the crew to manage and could create the potential for entanglement among the tori lines and fishing line.

Interaction rates for seabirds caught in the shallow-set fishery are higher in the first and second quarters (January through June) of the calendar year. Accordingly, the applicant would focus fishing effort during periods of higher seabird abundance, as practicable, to maximize the

value of the test. The EFP would be effective for no longer than 18 months from the date of issuance, unless earlier revoked, suspended, or modified.

With the exception of setting one hour before and one hour after local sunset and using two tori lines instead of blue-dyed bait and strategic offal discharge during setting, the vessel operating under the EFP would carry out fishing operations consistent with typical shallow-set fishing. All other requirements would continue, including seabird mitigation measures such as strategic offal discharge during hauling and safe handling practices.

The HLA anticipates that fishing under the EFP would have similar environmental impacts on target fish species, non-target fish species, and non-seabird protected species as conventional shallow-set fishing. The earlier setting time on treatment sets could, however, potentially optimize swordfish catch rates. The HLA also hypothesize that the risk of seabird interactions for sets during sunset hours would be mitigated by the use of tori lines. The EFP application provides additional information about these anticipated impacts.

NMFS maintains 100 percent observer coverage on shallow-set trips. In addition, any vessel permitted under the EFP would carry an electronic monitoring system. A stern-mounted video camera would monitor the number of birds present and seabird attacks and contacts during gear

setting. After the vessel returns to port, the video recordings would be reviewed and seabird data would be verified using observer data.

This would be a limited scale, pilot study to assess the potential risk to seabirds using alternative mitigation methods in place of already effective methods. The study would provide guidance on whether to pursue a full-scale study of tori lines in the shallow-set fishery. At the completion of the test, findings would be presented to the Council and NMFS to inform whether additional research is warranted, and support future management decisions.

NMFS seeks comments on the proposed experimental activity. We will consider comments received when deciding whether to approve the EFP and, if so, whether to attach any additional terms and conditions.

Authority: 16 U.S.C. 1801, *et seq.*

Dated: December 9, 2021.

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Ngagne Jafnar Gueye,

Acting Director, Office of Sustainable Fisheries,

National Marine Fisheries Service.

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